

Remarks

By the foregoing Amendment, claim 22 is amended, claims 1-21 and 26-41 are cancelled, and new claims 42-68 are presented. No new matter is added by this Amendment. Entry of the Amendment, and favorable consideration thereof, is earnestly requested.

The Examiner has noted that claims 1 and 2 are generic, and has withdrawn all other claims except claims 21-22 and 24-25, which read on the elected species.

The Examiner has rejected independent claim 1, and dependent claims 2, 21-22, and 24-25 under 35 U.S.C. §102(b) as anticipated by Bosch, DE 35 29 743.

New Independent Claim 22

Claim 22 has been rewritten in independent form, such that it incorporates all of the limitations of the claims from which it depends (i.e., claims 1 & 21), and has been further amended. Additionally, Applicant has submitted new claims 42-67, which either directly or indirectly depend from amended claim 22. Applicant respectfully submits that these amendments are permissible, as they simply add limitations to elected species claims 21-22. See *In re Muller*, 417 F.2d 1387, 1391, 163 U.S.P.Q. 641 (C.C.P.A. 1969) (“the addition of a limitation to a claim, as distinguished from the substitution of a limitation, can never result in a claim to a different species, since species claims must be mutually exclusive in scope. By including an additional limitation in each of four new claims here, appellant is not shifting to different species; he is simply defining his invention more narrowly...”); MPEP 806.04(f).

The Bosch reference does not anticipate claim 22, as amended, because all of the elements in claim 22 are not shown in this reference. Specifically, Bosch does not disclose the particular controller of claim 22. While Bosch does disclose an ECU (53), this ECU actuates some valves, which are, in turn, “assigned to some of the hydraulic

motors.” Bosch does not disclose a controller that receives signals containing information about the vehicle and then determines the rate at which to cause a supply device to drive a motor that drives a brake power source. In fact, the ECU (53) does not appear to control any supply devices at all. It certainly does not disclose a controller that, after receiving information about the vehicle, determines the rate at which to cause a supply device to drive the motor for a brake power source.

Additionally, claim 22, as amended, is not obvious in view of the Bosch reference, as there is no suggestion or motivation for one skilled in the art to make the necessary modification to arrive at the claimed invention. In order for the claimed invention to be obvious over the prior art, there must be some suggestion or motivation in the reference to make the relevant modification. See, e.g., MPEP 2143.01 (“The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.”); *In re Mills*, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990) (fact that prior art “may be capable of being modified to run the way the apparatus is claimed, there must be some suggestion or motivation in the reference to do so.”).

The ECU disclosed in Bosch controls valves that are for affecting “speed control,” and the information received by the ECU relates to the speeds of the engine and the charge air compressor. This is very different from the controller of the present invention, which controls a supply device, which, in turn, controls the motor driving a brake power source so that the brake power source can be driven independently of the speed of the engine. There is simply no suggestion in the Bosch reference to utilize a supply device and motor arrangement in conjunction with a controller that controls the supply device in order to control the brake power source at a desired rate, depending on the immediate demands of the braking system, regardless of what the current engine speed is.

New Independent Claim 68

Applicant has rewritten original claim 25 in independent form, such that it incorporates all of the limitations of the claims from which it depended (i.e., original claims 1 & 24), and the rejection thereof is respectfully traversed. Though the Examiner has pointed to the appearance in the Bosch reference of specific components recited in original claims 24 and 25, the mere appearance of specific structural components in isolation in a reference does not make it an anticipatory reference. See *Ex parte Beuther*, 71 U.S.P.Q.2d 1313, 1316 (BdPatApp&Int 2003) (unpublished) ("It is well settled, however, that anticipation is not established if in reading a claim on something disclosed in a reference it is necessary to pick, choose and combine various portions of the disclosure not directly related to each other by the teachings of the reference.") (citing *In re Arkley*, 455 F.2d 586, 587-88, 172 U.S.P.Q. 524, 526 (C.C.P.A. 1972)). The Bosch reference does not disclose the system recited in original claim 25 / new claim 68, and applicant respectfully submits that the Examiner has not indicated how the claim elements of original claim 25 are shown in the Bosch reference, but rather, has simply pointed to the random appearance of specific structural components (e.g., reservoir 13). According, Applicant submits that claim 68 is allowable.

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Response to Official Action

It is respectfully submitted that claims 22-25 and 42-68, all of the claims remaining in the application, are in order for allowance, and early notice to that effect is respectfully requested.

Respectfully submitted,



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